

Ordinance No. 06-074

An ordinance providing for the implementation of an automated red light enforcement program in the City of Arlington through the amendment of the "Traffic and Motor Vehicles" Chapter of the Code of the City of Arlington, Texas, by the addition of Article IX, titled Automated Red Light Enforcement; imposing a civil penalty; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Traffic and Motor Vehicles" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended by the addition of Article IX, Automated Red Light Enforcement, so that said article shall be and read as follows:

ARTICLE IX

AUTOMATED RED LIGHT ENFORCEMENT

Section 9.01 Definitions

In this article:

"**Department**" shall mean the Police Department of the City of Arlington, Texas.

"**Intersection**" shall mean the place or area where two (2) or more streets intersect.

"**Owner**" shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas

Department of Transportation or the analogous department or agency of another state or country. The term "owner" includes (i) a lessee of a motor vehicle under a lease of six (6) months or more or (ii) the lessee of a motor vehicle rented or leased from a motor vehicle rental or leasing company, but does not include the motor vehicle rental or leasing company itself.

"Photographic traffic monitoring system" shall mean a system that: (1) consists of a camera and vehicle sensor installed to work in conjunction with an electrically operated traffic control signal; and (2) is capable of producing at least two (2) recorded images that depict the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

"Recorded image" shall mean an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on a photograph or digital image.

"System location" shall mean the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

"Traffic control signal" shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

Section 9.02 Imposition of Civil Penalty for Creating Dangerous Intersections

- A. The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.
- B. The owner of a motor vehicle is liable for a civil penalty if the vehicle proceeds into an intersection at a system location when the traffic control signal for

that vehicle's direction of travel is emitting a steady red signal.

- C. The civil penalty for which the owner is liable is seventy-five dollars (\$75.00), provided that for a third or subsequent offense in any 12-month period, the amount of the penalty shall be two hundred dollars (\$200.00).
- D. An owner who fails to timely pay the civil penalty shall be subject to a late payment fee of twenty-five dollars (\$25.00).

Section 9.03 Enforcement; Procedures

- A. The Department is responsible for the enforcement and administration of this article.
- B. In order to impose a civil penalty under this article, the Department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30th day after the date the violation is alleged to have occurred to:
 - 1. The owner's address as shown on the registration records of the Texas Department of Transportation; or
 - 2. If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.
- C. A notice of violation issued under this article shall contain the following:
 - 1. A description of the violation alleged.
 - 2. The location of the intersection where the violation occurred.
 - 3. The date and time of the violation.
 - 4. The name and address of the owner of the vehicle involved in the violation.

5. The registration number displayed on the license plate of the vehicle involved in the violation.
6. A copy of a recorded image of the vehicle involved in the violation that depicts the registration number displayed on the license plate of that vehicle.
7. The amount of the civil penalty to be imposed for the violation.
8. The date by which the civil penalty must be paid.
9. A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty.
10. Information that informs the person named in the notice of violation:
 - a. of the person's right to contest the imposition of the civil penalty against the person in an administrative adjudication;
 - b. of the manner and time in which imposition of the civil penalty may be contested;
 - c. that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and that failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability; and
 - d. that failure to pay the civil penalty within the time allowed shall result in the imposition of a late-payment fee of twenty-five dollars (\$25.00).
11. A statement that, if at the time and place of the violation the vehicle was being operated by a person other than the owner, if the owner is a natural person, the owner may transfer liability for the violation to the person who was operating the vehicle at that time and place if the owner submits to the City by affidavit, on a form provided by the City, or under oath at an administrative adjudication hearing the name and current address of the person:

- a. operating the vehicle at the time and place of the violation;
 - b. who was the lessee of the vehicle at the time of the violation, if the vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time; or
 - c. who was the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation.
- D. A notice of violation under this article is presumed to have been received on the fifth day after the date the notice of violation is mailed.
- E. In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner.

Section 9.04 Administrative Adjudication Hearing

- A. A person who receives a notice of violation under this article may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within fifteen (15) calendar days after receipt of the notice of violation. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the Chief of Police.
- B. Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty stated in the notice of violation and constitutes a waiver of the right to appeal under Section 9.04(J).
- C. Failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability for the full amount of the civil penalty stated in the notice of violation and constitutes a waiver of the right to appeal under Section 9.04(J).

- D. The civil penalty shall not be assessed if:
1. after a hearing, the hearing officer enters a finding of no liability; or
 2. within the time prescribed in the notice of violation, the person against whom the civil penalty is to be assessed submits the proof described in Section 9.03(C) (11).
- E. A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of fifty dollars (\$50.00) in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within thirty (30) calendar days of the hearing.
- F. In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic-control signal monitoring system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the City or the entity with which the City contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the City that alleges a violation based on an inspection of the pertinent recorded image, is admissible in a proceeding under this article, is evidence of the facts contained in the affidavit, and is prima facie evidence of the violation alleged in the notice of violation.
- G. It shall be an affirmative defense to liability under this article, to be proven by a preponderance of the evidence, that:
1. the traffic-control signal was not in proper position and sufficiently legible to an ordinarily observant person;

2. the operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
 3. the operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
 4. the motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and that the operator was acting in compliance with that chapter;
 5. the motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner;
 6. the license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;
 7. the owner of the vehicle is a natural person, the vehicle was being operated by a person other than the owner of the vehicle, and the owner submits to the City by affidavit, on a form provided by the City, or under oath at an administrative adjudication hearing the name and current address of the person operating the vehicle at the time and place of the violation; or
 8. the presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than non-compliance.
- H. To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

- I. Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:
1. the person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person; and
 2. within the same period required by Section 9.03(C)(10)(b) for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under Subsection (1), the person requests an administrative adjudication hearing.
- J. A person who is found liable after an administrative adjudication hearing may appeal that finding of liability to the Municipal Court by filing a notice of appeal with the clerk of the Municipal Court. The notice of appeal must be filed not later than the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability and shall be accompanied by the payment of an appellate filing fee of twenty five dollars (\$25.00). Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the Municipal Court by trial de novo. The trial de novo is an administrative hearing before a Municipal Court judge without a right to a jury trial. Unless a valid objection is made the affidavits submitted under Section 9.04(F) shall be admitted by the municipal judge in the trial de novo, and the issues must be proved by the City by a preponderance of the evidence.

Section 9.05 Effect of Liability; Exclusion of Civil Remedy; Enforcement

- A. The imposition of a civil penalty under this article is not a conviction and may not be considered a conviction for any purpose.

- B. The Department may not impose a civil penalty under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a violation of Section 544.007(d) of the Texas Transportation Code recorded by the traffic-control signal monitoring system.
- C. The City Attorney is authorized to file suit to enforce collection of a civil penalty imposed under this article.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court

of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

6.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

7.

This ordinance shall become effective ten days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 25th day of July, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 8th day of August, 2006, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 